

BEFORE THE FEDERAL MARITIME COMMISSION

DOCKET NUMBER 16-12

PRO TRANSPORT, INC.,
PRO TRANSPORT JACKSONVILLE, INC.,
PRO TRANSPORT SAVANNAH, INC., and
PRO TRANSPORT CHARLESTON, INC.

Plaintiffs / Complainants,

vs.

SEABOARD MARINE OF FLORIDA, INC., and
SEABOARD MARINE LTD., INC.

Defendants / Respondents.

_____/

**MEMORANDUM IN OPPOSITION TO RESPONDENT'S MOTION FOR A STAY,
AND REQUEST FOR ORAL ARGUMENT**

Plaintiffs, PRO TRANSPORT, INC., PRO TRANSPORT JACKSONVILLE, INC., PRO TRANSPORT SAVANNAH, INC., and PRO TRANSPORT CHARLESTON, INC. (herein "Pro Transport"), by and through their undersigned counsel, and in accordance with 46 C.F.R. § 502.74, respond to the Motion for a Stay filed by SEABOARD MARINE OF FLORIDA, INC., SEABOARD MARINE LTD., INC. (herein "Seaboard"), on July 13, 2016, and state as follows:

Introduction.

Seaboard owes Pro Transport \$188,005.78 for transporting intermodal containers at Seaboard's request and direction. Seaboard is further indebted to Pro Transport for all damages resulting from this inexcusable refusal to pay. As of the date of this filing, most of the delinquent payments are more than six months old, with some dating back an entire year.

But this action is not just about Seaboard's refusal to pay. It is also about the reasons why Seaboard has refused to pay, and the entirety of its conduct, which is prohibited by federal law. This body has specific jurisdiction over this matter pursuant to the Shipping Act of 1984. This is far more than "a garden variety commercial dispute" as Seaboard's disparagingly asserted in its Motion.¹

The evidence in this action will clearly demonstrate that Seaboard has perniciously "refused to deal and negotiate" with Pro Transport and has acted with "unreasonable prejudice" toward Pro Transport. Yes, these are terms specifically recited in the Shipping Act – 46 U.S.C. § 41106(2-3) – but it is those very terms upon which this body has jurisdiction. The evidence will specifically show: 1) Seaboard never questioned any bill, invoice, or statement submitted by Pro Transport; 2) Seaboard required Pro Transport to **hand deliver**, almost daily, all bills for transportation services, with all supportive documentation, which Pro Transport always did without hesitation; and 3) Seaboard refused to respond to repeated inquiries for the status of the expected and required payments of those bills. Any dispute that Seaboard may now claim with respect to these unpaid services would be the product of fabrication after the inception of litigation. And after more than three months since litigation commenced, Seaboard has yet to file any pleading explaining or attempting to justify its conduct. One would reasonably think if there is a valid defense, Seaboard would assiduously assert it. It has not.

Pro Transport has one theory about Seaboard's egregious conduct: Maritere Martinez, the vice president of specialized services for Seaboard, is punishing Pro Transport in an effort to conceal or deflect her gross deficiencies in logistics management

¹ See Seaboard's Motion for a Stay, ¶7.

and apparently has allies within her organization. Other reasons may become visible during discovery. Simply stated, Seaboard, an international corporation with multi-billion dollars in annual revenue, is squeezing a local family-owned business. These are the very tactics the Federal Maritime Commission was created to prevent and to adjudicate, notwithstanding any other legal proceedings.

The Procedural history of this action and the state court action demonstrate that Seaboard continues to delay.

Look at what has transpired since this action and the state court action in Florida have been filed: Seaboard continues to delay.

Pro Transport's Complaint in Miami-Dade County Circuit Court was filed on April 17, 2016. Seaboard filed a frivolous motion to dismiss that complaint on the very last day a responsive pleading was permitted, which was May 10, 2016. Seaboard's counsel did not even bother to attend the hearing on his motion, which was May 18, 2016. Judge Giselle Cardonne Ely, constrained by the non-appearance of the moving party, deferred ruling on the motion but also issued an order directing mediation to occur within 45 days, or before July 1, 2016. In coordinating the mediation, Seaboard's Florida counsel requested an abatement of the Federal Maritime Commission action, to which, as a professional, the undersigned agreed. That is why this tribunal entered a stay and extension of the initial deadlines. Seaboard's Florida counsel even requested that the undersigned dismiss the Federal Maritime Commission action because it "might make things resolve more smoothly." (Email of Bob Planck, May 31, 2016, 1019am). The undersigned explained that a dismissal of both actions would be filed immediately once Seaboard paid its debt to Pro Transport, which Seaboard's Florida counsel said was likely to occur, but that a dismissal prior to the mediation was not possible. The mediation was scheduled for June 30, 2016. It

would have been scheduled earlier but Seaboard's counsel claimed he was on vacation for the first three weeks of June and requested, as another professional courtesy, for it to be scheduled during the last week of June.

Just prior to the mediation, Seaboard's Florida counsel sent the undersigned a correspondence advising that instead of paying Pro Transport the almost \$200,000 which it owes, Seaboard instead would be seeking reimbursement of nearly \$2,000,000 for transports dating back to January of 2015. The mediation would have been futile, so it was canceled by the undersigned. In retrospect, it was obvious that Seaboard intimated a full resolution of the case to the satisfaction of Pro Transport to simply delay the judicial process in both actions. On July 7, 2016, Judge Cardonne quickly denied Seaboard's motion to dismiss, and ordered Seaboard to answer the Complaint by July 27, 2016. On July 27, 2016, at 448pm, just 12 minutes prior to the deadline for filing its answer to the Complaint, Seaboard's local counsel filed a Motion for Extension of Time to respond to the Complaint, claiming pre-planned vacations and a heavy case load. In the motion, Seaboard suggested it "could" file its response (not answer) to the complaint by August 9, 2016. The undersigned has set this motion for an emergency hearing with Judge Cardonne on August 3, 2016, the soonest she is available for motion calendar.

So, more than three months have passed since Seaboard was served with the Complaint in the state court action, and it has done nothing to advance the case, but has done much to stall it in its tracks.

This Federal Maritime Commission action was commenced on May 3, 2016 and Chief Judge Guthridge issued the Initial Order on May 17, 2016. As a result of Seaboard manipulating the mediation process, the deadline for Seaboard to respond to Pro

Transport's Complaint was extended to July 13, 2016, and on the afternoon of that day, Seaboard filed its Motion for a Stay. On July 11, 2016, the undersigned and Seaboard's counsel in this action had a telephone conference. The undersigned attempted to discuss each of the points and instructions referenced in the Initial Order, but Seaboard's counsel refused to have a discussion on those topics. Instead, Seaboard's counsel stated that he would be seeking an abatement of this federal action but would not share the details, stating that it would be set forth in the actual filing.

Given all of this, it is safe to say Seaboard adheres to the axiom that justice delayed is justice denied.

The Motion for a Stay Must Be Denied.

Seaboard's motion for a stay is rooted in the incorrect proposition that a state and federal tribunal cannot preside over somewhat similar matters simultaneously. In matters where both a state court and federal court have jurisdiction, a strong presumption in favor of federal jurisdiction was established in *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 96 S.Ct. 1236, 47 L.Ed.2d 483 (1976) and *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 103 S.Ct. 927, 74 L.Ed.2d 765 (1983). As explained by the Court in *Luckie v. Smith Barney, Harris Upham & Co., Inc.*, 766 F. Supp. 1116 (M.D. Fla. 1991), "these cases clearly establish that the surrender of federal jurisdiction in favor of a state court proceeding is the exception, not the rule."²

Moreover, there is no basis for a federal court to surrender jurisdiction to a state court where only monetary damages are being sought in the state court action. This has

² It should be noted that Seaboard has not requested a stay in the local state court action, and Pro Transport believes it has waived such a motion because it was not raised in its motion to dismiss and is limited now to only filing an Answer to the Complaint in the state court case.

been the prevailing federal jurisprudence for more than 140 years. As explained by the Court in *Byrd-Frost v. Elder*, 93 F.2d 30 (5th Cir. 1937) “[W]here a suit is strictly *in personam*, nothing more than a money judgment being sought, there is no objection to a concurrent action in another jurisdiction, although the same issues are being tried,” *citing Stanton v. Embrey*, 93 U.S. 548, 23 L.Ed. 983 (1876) and *Gordon v. Gilfoil*, 99 U.S. 168, 169, 25 L.Ed. 383 (1878).

A reference should be made to the *Younger*³ abstention doctrine, although Seaboard did not specifically cite to it, the concept of such abstention resonated in its motion. It would be futile to properly discuss the nuances of federal abstention in this briefing, but it should be pointed out that the United States Supreme Court recently rejected the notion that federal courts should abstain when there is a pending state court action. In *Sprint Communications, Inc. v. Jacobs*, 134 S. Ct. 584, 187 L. Ed. 2d 505, 82 U.S.L.W. 4027 (2014), the Supreme Court explained that federal courts have a “virtually unflagging” obligation to hear cases within their jurisdiction. That decision was unanimous, and Justice Ginsburg, writing for the Court, explained that abstention is not appropriate merely because a state court is considering a case involving the same subject matter.

It must be emphasized that this action, and the Florida state court action, are not the same cases. While they involve the same parties, only monetary damages are being sought the Florida state court action. Here, in this action, Pro Transport is seeking:

[A] temporary restraining order and preliminary injunction restraining the Defendants, their officers, agents, servants, employees, attorneys and all persons in active concert or participation with them, who receive notice of such order, and each of them from refusing to make the required payments to Pro Transport; from refusing to cooperate in the investigation and processing of insurance claims; and from refusing to provide Pro Transport

³ *Younger v. Harris*, 91. S. Ct. 746, 401 U.S. 37, 27 L. Ed. 2d 669 (1971).

with access to the Seaboard Marine terminal operation at the Port of Miami-Dade to load and/or unload containers and cargo for its customers; and from otherwise refusing to deal and negotiate with Pro Transport under terms and conditions substantially identical to those terms and conditions offered to all other motor carriers.⁴

Injunctive relief is not being sought in the Florida state court action. However, this is specific relief that is afforded in this tribunal as provided by 46 U.S.C. § 41306.⁵ It is clear that different remedies are being sought by Pro Transport as provided by the distinct provisions of the applicable federal and state law remedies. Moreover, the Federal Maritime Commission has a responsibility, pursuant to the legislation that created it, to enjoin the type of conduct that Seaboard has and continues to use to harm Pro Transport.

Seaboard is requesting that the Federal Maritime Commission abdicate this responsibility for its own benefit. Pro Transport may very well recover every penny it is owed through a judgment in the Florida state court case, but that will not have accomplished the overriding goal of ensuring that Seaboard cease its illegal conduct. Pro Transport is certainly amenable to streamlining discovery to avoid unnecessary duplication in both proceedings. But the purposes of each complaint and action are distinct and not mutually exclusive.

WHEREFORE, Pro Transport requests that Seaboard's Motion for a Stay be denied and further requests an Oral Argument on Seaboard's Motion.

⁴ See Complaint, "Wherefore" clause.

⁵ Reparations, attorney's fees, and penalties are additional remedies that can be awarded by the FMC in this action. See 46 U.S.C. §§ 41107, 41108, 41109, 41305, and 41306(d).

DATED this 28th day of July, 2016.

Respectfully submitted

THE SHELLEY LAW FIRM, LLC,

/s/_____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of July, 2016, a true and correct copy of the foregoing pleading was served via email to:

Wayne Rohde
Cozen O'Connor
1200 19th Street N.W.
Washington, D.C. 20036
wrohde@cozen.com

/s/_____

MICHAEL SHELLEY